



February 11, 2003

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## HOUSE BILL No. 1811

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DIGEST OF HB 1811 (Updated February 5, 2003 7:25 PM - DI 92)

**Citations Affected:** IC 4-4; IC 6-2.5; IC 6-3; IC 6-3.1; IC 6-5.5; IC 6-6; IC 6-8.1; noncode.

**Synopsis:** Various tax matters. Prohibits the assignment of the right to a refund of sales tax paid by a retail merchant for a sale related to an uncollectible account receivable. Requires the filing of an amended Indiana return when modifications in a taxpayer's federal return results in a change in the taxpayer's adjusted gross income. Eliminates a requirement that a withholding agent that makes electronic adjusted gross income deposits file a quarterly return. For purposes of the financial institutions tax: (1) Eliminates an exception to the term "unitary group"; and (2) provides for the taxation of receipts that are not taxable in any other taxing jurisdiction. Expands the penalties applicable to a person who does not register an aircraft and pay applicable gross retail taxes. Eliminates the requirement that the department of state revenue collect vehicle identification information on a tax return. Allows the department of state revenue to remove a person who is not liable for unpaid tax from an assessment notice. Indicates that the limitation period on the issuance of an assessment does not apply to an assessment reissued to the persons liable for the tax. Repeals an obsolete law granting an expired investment credit and a criminal penalty for failure to provide motor vehicle information to the department of state revenue.

**Effective:** July 1, 2003; December 31, 2003; July 1, 2004.

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### Crawford, Cochran

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January 23, 2003, read first time and referred to Committee on Ways and Means.  
February 10, 2003, amended, reported — Do Pass.

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HB 1811—LS 6907/DI 51+



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February 11, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1811

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-4-8-1, AS AMENDED BY P.L.227-1999,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 1. As used in this chapter:

4 "Department" means the department of commerce.

5 "Enterprise zone" means an enterprise zone created under  
6 IC 4-4-6.1.

7 "Governing body" means the legislative body of a city, town, or  
8 county, an economic development commission, or any board  
9 administering the affairs of a special taxing district.

10 "Industrial development program" means any program designed to  
11 aid the growth of industry in Indiana and includes:

12 (1) the construction of airports, airport facilities, and tourist  
13 attractions;

14 (2) the construction, extension, or completion of sewerlines,  
15 waterlines, streets, sidewalks, bridges, roads, highways, public  
16 ways, and information and high technology infrastructure (as  
17 defined in this section);

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(3) the leasing or purchase of property, both real and personal;  
and

(4) the preparation of surveys, plans, and specifications for the  
construction of publicly owned and operated facilities, utilities,  
and services.

"Information and high technology infrastructure" includes, but is not  
limited to, fiber optic cable and other infrastructure that supports high  
technology growth and the purchase and installation of such fiber optic  
cable and other infrastructure.

"Minority enterprise small business investment company" means an  
investment company licensed under 15 U.S.C. 681(D).

"Qualified entity" means a city, town, county, economic  
development commission, or special taxing district.

"Small business investment company" means an investment  
company licensed under 15 U.S.C. 691 et seq.

"State corporation" means the state corporation ~~(as defined by~~  
~~IC 6-3.1-5-2):~~ **organized under IC 6-3.1-5-7 (before its repeal) and**  
**IC 6-3.1-5-8 (before its repeal).**

SECTION 2. IC 6-2.5-6-9 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) In determining  
the amount of state gross retail and use taxes which he must remit  
under section 7 of this chapter, a retail merchant shall deduct from his  
gross retail income from retail transactions made during a particular  
reporting period, an amount equal to his receivables which:

(1) resulted from retail transactions in which the retail merchant  
did not collect the state gross retail or use tax from the purchaser;

(2) resulted from retail transactions on which the retail merchant  
has previously paid the state gross retail or use tax liability to the  
department; and

(3) were written off as an uncollectible debt for federal tax  
purposes during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a)  
and subsequently collects that receivable, then the retail merchant shall  
include the amount collected as part of his gross retail income from  
retail transactions for the particular reporting period in which he makes  
the collection.

**(c) The right to a deduction under this section is not assignable.**

SECTION 3. IC 6-3-4-6 IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Any taxpayer, upon request  
by the department, shall furnish to the department a true and correct  
copy of any tax return which he has filed with the United States  
Internal Revenue Service which copy shall be certified to by the

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1 taxpayer under penalties of perjury.

2 (b) Each taxpayer shall notify the department of any modification  
3 of:

4 (1) a federal income tax return filed by the taxpayer after January  
5 1, 1978; or

6 (2) the taxpayer's federal income tax liability for a taxable year  
7 which begins after December 31, 1977.

8 The taxpayer shall file the notice, on the form prescribed by the  
9 department, within one hundred twenty (120) days after the  
10 modification is made.

11 **(c) If the federal modification results in a change in the**  
12 **taxpayer's federal or Indiana adjusted gross income, the taxpayer**  
13 **shall file an Indiana amended return within one hundred twenty**  
14 **(120) days after the modification is made.**

15 SECTION 4. IC 6-3-4-8.1 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.1. (a) Any entity that  
17 is required to file a monthly return and make a monthly remittance of  
18 taxes under sections 8, 12, 13, and 15 of this chapter shall file those  
19 returns and make those remittances twenty (20) days (rather than thirty  
20 (30) days) after the end of each month for which those returns and  
21 remittances are filed, if that entity's average monthly remittance for the  
22 immediately preceding calendar year exceeds one thousand dollars  
23 (\$1,000).

24 (b) The department may require any entity to make the entity's  
25 monthly remittance and file the entity's monthly return twenty (20) days  
26 (rather than thirty (30) days) after the end of each month for which a  
27 return and payment are made if the department estimates that the  
28 entity's average monthly payment for the current calendar year will  
29 exceed one thousand dollars (\$1,000).

30 (c) If a person files a combined sales and withholding tax report and  
31 either this section or IC 6-2.5-6-1 requires the sales or withholding tax  
32 report to be filed and remittances to be made within twenty (20) days  
33 after the end of each month, then the person shall file the combined  
34 report and remit the sales and withholding taxes due within twenty (20)  
35 days after the end of each month.

36 (d) If the department determines that an entity's:

37 (1) estimated monthly withholding tax remittance for the current  
38 year; or

39 (2) average monthly withholding tax remittance for the preceding  
40 year;

41 exceeds ten thousand dollars (\$10,000), the entity shall remit the  
42 monthly withholding taxes due by electronic fund transfer (as defined

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in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the remittance is due.

(e) If an entity's withholding tax remittance is made by electronic fund transfer, the entity is not required to file a monthly withholding tax return. ~~However, the entity shall file a quarterly withholding tax return before the twentieth day following the end of each calendar quarter.~~

SECTION 5. IC 6-5.5-1-18, AS AMENDED BY P.L.129-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) "Unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership, a limited liability company, or a trust, provided that each member is either a holding company, a regulated financial corporation, a subsidiary of either, a corporation that conducts the business of a financial institution under ~~IC 6-5.5-1-17(d)(2)~~, **section 17(d)(2) of this chapter**, or any other entity, regardless of its form, that conducts activities that would constitute the business of a financial institution under ~~IC 6-5.5-1-17(d)(2)~~ **section 17(d)(2) of this chapter** if the activities were conducted by a corporation. The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. ~~However, the term does not include an entity that does not transact business in Indiana.~~

(b) Unity is presumed whenever there is unity of ownership, operation, and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are members of the unitary group, as described in subsection (a). However, the absence of these centralized activities does not necessarily evidence a nonunitary business.

(c) Unity of ownership, when a corporation is involved, does not exist unless that corporation is a member of a group of two (2) or more business entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by:

- (1) a common owner or common owners, either corporate or noncorporate; or
- (2) one (1) or more of the member corporations of the group.



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SECTION 6. IC 6-5.5-4-16 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE DECEMBER 31, 2003]: **Sec. 16. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another taxing jurisdiction if:**

**(1) in that taxing jurisdiction the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or**

**(2) that taxing jurisdiction has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the taxing jurisdiction does or does not.**

SECTION 7. IC 6-6-6.5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 19. (a)** The registration of any taxable aircraft without payment of the tax imposed by this chapter shall be void, and the department shall take possession of the certificate of registration and other evidences of registration, until the owner shall have paid the tax together with any penalties assessed by the department.

**(b)** If an owner does not register his aircraft and pay the tax imposed by this chapter when required, the owner is subject to a penalty and interest on the unpaid tax. The penalty is the greater of twenty dollars (\$20) or twenty percent (20%) of the unpaid tax. The interest applies at the rate established in IC 6-8.1-10-1. The penalty and interest apply from the date the tax becomes delinquent until the aircraft is registered and the tax paid.

**(c)** If an airport owner does not report the aircraft based at his airport when required by section 23 of this chapter, the department may assess a penalty equal to ten dollars (\$10) for each day that the report is late.

**(d)** If an owner does not register the owner's aircraft and pay the gross retail or use tax when required by this chapter, the owner shall be subject to ~~a penalty~~ **the penalties** and interest on the unpaid gross retail or use tax ~~as that are~~ established in ~~IC 6-8.1-10-1~~. **IC 6-8.1-10.**

SECTION 8. IC 6-8.1-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2003]: **Sec. 2.5. (a)** **If the department determines that a proposed assessment notice includes an individual who is not responsible for the tax liability, a new assessment may be made naming only the taxpayer that is responsible for the tax liability.**

**(b)** **For assessments made under subsection (a), the time limitation for assessments in section 2 of this chapter does not**

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1 **apply.**

2 SECTION 9. IC 6-8.1-6-5 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. ~~(a)~~ The department  
4 shall request from each taxpayer

5 ~~(1) vehicle identification information for vehicles owned by the~~  
6 ~~taxpayer; and~~

7 ~~(2) the amount of the taxpayer's gross income (as defined in~~  
8 ~~Section 61 of the Internal Revenue Code) derived from sources~~  
9 ~~within or outside Indiana using the provisions applicable to~~  
10 ~~determining the source of adjusted gross income that are set forth~~  
11 ~~in IC 6-3-2-2. The taxpayer shall itemize the amount of gross~~  
12 ~~income derived from each source.~~

13 ~~(b) The department shall send a list to the bureau of motor vehicles~~  
14 ~~showing by taxpayer the vehicle identification information obtained by~~  
15 ~~the department. However, the name, tax identification number, and the~~  
16 ~~corresponding information sent to the bureau may not include income~~  
17 ~~tax information.~~

18 SECTION 10. IC 6-8.1-7-1, AS AMENDED BY P.L.204-2001,  
19 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
20 JULY 1, 2003]: Sec. 1. (a) This subsection does not apply to the  
21 disclosure of information concerning a conviction on a tax evasion  
22 charge. Unless in accordance with a judicial order or as otherwise  
23 provided in this chapter, the department, its employees, former  
24 employees, counsel, agents, or any other person may not divulge the  
25 amount of tax paid by any taxpayer, terms of a settlement agreement  
26 executed between a taxpayer and the department, investigation records,  
27 investigation reports, or any other information disclosed by the reports  
28 filed under the provisions of the law relating to any of the listed taxes,  
29 including required information derived from a federal return, except to:

- 30 (1) members and employees of the department;  
31 (2) the governor;  
32 (3) the attorney general or any other legal representative of the  
33 state in any action in respect to the amount of tax due under the  
34 provisions of the law relating to any of the listed taxes; or  
35 (4) any authorized officers of the United States;

36 when it is agreed that the information is to be confidential and to be  
37 used solely for official purposes.

38 (b) The information described in subsection (a) may be revealed  
39 upon the receipt of a certified request of any designated officer of the  
40 state tax department of any other state, district, territory, or possession  
41 of the United States when:

- 42 (1) the state, district, territory, or possession permits the exchange



of like information with the taxing officials of the state; and

(2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family and children, and to any county director of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to an institution of higher education may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved institutions of higher learning (as defined by IC 20-12-21-3(2)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor, and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

(1) the state agency shows an official need for the information; and

(2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The name and address of retail merchants, including township,

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as specified in IC 6-2.5-8-1(h) may be released solely for tax collection purposes to township assessors.

(h) The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

(i) All information relating to the delinquency or evasion of the motor vehicle excise tax ~~shall~~ **may** be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

(j) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana ~~must~~ **may** be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(k) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(l) This section does not apply to:

- (1) the beer excise tax (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the motor vehicle excise tax (IC 6-6-5);
- (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- (8) the fees under IC 13-23.

(m) The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under IC 6-2.5-6-14.

SECTION 11. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 6-3.1-5; IC 6-8.1-10-11.

SECTION 12. [EFFECTIVE DECEMBER 31, 2003] **IC 6-5.5-1-18, as amended by this act, and IC 6-5.5-4-16, as added by this act, apply only to taxable years beginning after December 31, 2003.**

SECTION 13. **An emergency is declared for this act.**



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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1811, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 19 through 42.

Page 3, delete line 1.

Page 3, delete lines 21 through 42.

Delete page 4.

Page 5, delete lines 1 through 5.

Page 6, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 8. IC 6-5.5-1-18, AS AMENDED BY P.L.129-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) "Unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership, a limited liability company, or a trust, provided that each member is either a holding company, a regulated financial corporation, a subsidiary of either, a corporation that conducts the business of a financial institution under ~~IC 6-5.5-1-17(d)(2)~~, **section 17(d)(2) of this chapter**, or any other entity, regardless of its form, that conducts activities that would constitute the business of a financial institution under ~~IC 6-5.5-1-17(d)(2)~~ **section 17(d)(2) of this chapter** if the activities were conducted by a corporation. The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. ~~However, the term does not include an entity that does not transact business in Indiana.~~

(b) Unity is presumed whenever there is unity of ownership, operation, and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are members of the unitary group, as described in subsection (a). However, the absence of these centralized activities does not necessarily evidence a nonunitary business.

(c) Unity of ownership, when a corporation is involved, does not exist unless that corporation is a member of a group of two (2) or more business entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by:

(1) a common owner or common owners, either corporate or

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noncorporate; or

(2) one (1) or more of the member corporations of the group.

SECTION 9. IC 6-5.5-4-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2003]: **Sec. 16. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another taxing jurisdiction if:**

**(1) in that taxing jurisdiction the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or**

**(2) that taxing jurisdiction has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the taxing jurisdiction does or does not."**

Page 6, line 41, strike "6-8.1-10-1."

Page 10, delete lines 2 through 29, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE DECEMBER 31, 2003] **IC 6-5.5-1-18, as amended by this act, and IC 6-5.5-4-16, as added by this act, apply only to taxable years beginning after December 31, 2003."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1811 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 26, nays 0.

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